



POLICE DEPARTMENT

-----X

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2018-18572
Sergeant Edel Sanchez	:	
Tax Registry No. 935686	:	
Manhattan Court Section	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Jamie Moran, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Roger Blank, Esq.
373 Park Avenue South, 6th Floor
New York, NY 10016

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Sergeant Edel Sanchez, while off-duty and assigned to the Transit Bureau Anti-Terrorism Unit, on or about February 4, 2018, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he engaged in a physical altercation with [the Complainant.]

P.G. 203-10, Page 1, Para. 5

Public Contact - Prohibited Conduct

2. Said Sergeant Edel Sanchez, while off-duty and assigned to the Transit Bureau Anti-Terrorism Unit, on or about February 6, 2018, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he called [the Complainant] and told her that if [the minor] did not come home, he would "look for her and shoot her."

P.G. 203-10, Page 1, Para. 5

Public Contact - Prohibited Conduct

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 29 and September 15, 2020. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenants Jose Briceno and Nelson Tolentino, and Sergeants Kilsy Ziccardi and Carlos Figueroa. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of Specification 1 and Not Guilty of Specification 2, and recommend a penalty of the loss of 30 vacation days and one year of dismissal probation, in addition to the forfeiture of 30 days served on pretrial suspension without pay. I further recommend that four (4) suspension days previously served be restored to Respondent.

ANALYSIS

In this case it is undisputed that on February 12, 2018, the Complainant went to the [REDACTED] precinct where she spoke to several officers. In her recorded conversation with Sergeant Kilsy Ziccardi, which took place in Spanish, the Complainant stated that on February 4, 2018, she returned from work to the home she shared with Respondent at around 5:00 am and had a verbal

and physical altercation with Respondent during which he caused bruises to her arms and neck. A second recorded interview of the Complainant in Spanish was conducted on February 15, 2018, by Lieutenant Tolentino. In this interview, the Complainant again described having a physical and verbal altercation with Respondent which resulted in her being bruised. In both recorded interviews, the Complainant also stated that Respondent threatened the Complainant's teen daughter (hereinafter "the minor") on February 6, 2018.

The Complainant did not testify at trial despite requests from the Department to do so. Respondent did testify and denied that any verbal or physical altercation occurred on February 4, 2018. He also denied threatening the minor.

The issues in this case are whether Respondent engaged in a physical altercation with the Complainant on February 4, 2018, and whether he told the Complainant on February 6, 2018, that if the minor did not come home, he would look for her and shoot her.

At trial, the Department presented four witnesses who interviewed the Complainant.¹

On February 12, 2018, at the [REDACTED] precinct, the Complainant spoke to Police Officer Taj Green, using her niece as a translator. A complaint report was prepared. (Dep't Ex. 1) The Complainant then spoke, in Spanish, to Lieutenant Jose Briceno, who is certified as fluent in Spanish by the Department.

Lieutenant Briceno testified that during an interview that lasted about 15-20 minutes, the Complainant told him that on February 4, 2018, she returned home from work at about 5 to 5:30 am to find Respondent sleeping on a couch. She didn't want to wake him so she put a blanket on him, left him on the couch, and went to the bedroom. Respondent went to the bedroom and was upset that the Complainant did not wake him up so he could go to the bedroom with

¹ Lieutenant Tolentino conducted the majority of the interview with the Complainant on February 15, 2018, but Sergeant Figueroa also participated in the interview.

her. Lieutenant Briceno further testified that the Complainant told him that Respondent punched her in the stomach, grabbed her by the arm and shook her and then threw her on the bed and choked her. The Complainant told him it had happened before. (Tr. pp. 7-10, 38)

Lieutenant Briceno testified that the Complainant also told him about another incident where Respondent was upset he couldn't find the minor and he called the Complainant and told her to tell the minor to go to their home. According to the Complainant, Respondent said that if the minor did not come home, the minor was going to "find out who he was" and threatened to shoot the minor. The Complainant told the minor to go to her father's house. (Tr. pp. 10-11)

Lieutenant Briceno described the Complainant as crying and hesitant to speak. He stated that the Complainant was worried that Respondent would be arrested. (Tr. p. 12)

After speaking to the Complainant, Lieutenant Briceno reviewed the complaint report prepared by Police Officer Green (Dep't. Ex. 1) and found that it was consistent with what the Complainant had told him. Lieutenant Briceno [REDACTED], (Dep't. Ex. 2) and verified the Domestic Incident report that Police Officer Green and the Complainant filled out. (Dep't. Ex. 3) He testified that what the Complainant wrote on Dep't. Ex. 3 in Spanish was consistent with what she had told him and that the translation from Spanish to English on the form was correct. (Tr. pp. 14-19)

Lieutenant Briceno acknowledged that on Dep't. Ex. 3, the boxes to indicate whether the victim was injured or in pain were checked as "No," as was the box for child victim. The box asking if there was reasonable cause to suspect a child may be the victim of abuse, neglect, maltreatment or endangerment was also checked as "No." He did not remember if the Complainant ever told him that two children were present during the altercation. He testified that he probably would have noted it in the paperwork if the Complainant had told him children were present for the altercation. He did not note that children were present on the [REDACTED]

he prepared. (Tr. pp. 13-19, 22, 24-25, 28) While he did not prepare the computerized complaint report (Resp. Ex. A), he acknowledged the form did not document that the Complainant said Respondent threatened to shoot the minor. (Tr. pp. 33-34)

Sergeant Kils Ziccardi, who is also certified by the Department as fluent in Spanish, interviewed the Complainant at the [REDACTED] precinct on February 12, 2018. They spoke in Spanish, for about a half hour. In this interview, which was recorded and transcribed in Spanish and translated into English (Dep't Exs. 5A, 5B), the Complainant told Sergeant Ziccardi that she came home from work at around 5 am on February 4th and found Respondent laying on the couch. She said that he had been drinking with his family and she didn't want to disturb him so she put a blanket on him and went to the bedroom. When Respondent woke up, he was angry and he went into the bedroom and started arguing with the Complainant. He accused her of leaving him on the couch like a dog. She tried to explain that she was just trying not to disturb him. The argument became physical and Respondent pinned the Complainant down on the bed and grabbed her by the neck. (Tr. pp. 46-47, 51-53, 55-56)

The Complainant also told Sergeant Ziccardi about an incident on February 6, 2018. She said that Respondent tracked her daughter, the minor's phone and when he saw her at a location he had not given her permission to be at, he tried to call her but the minor did not answer. Respondent threatened to beat the minor. The Complainant tried to calm Respondent down and told the minor to go stay at her father's house. The Complainant did not mention anything to Sergeant Ziccardi about Respondent threatening to shoot the minor. (Tr. 56-57, 60, 76-77)

Sergeant Ziccardi described the Complainant as looking scared and crying during the interview. The Complainant described herself as afraid and told Sergeant Ziccardi that she didn't want to hurt Respondent's career and she didn't want to make this report, but she wanted the abuse to stop since she was afraid Respondent would go too far. The Complainant told

Sergeant Ziccardi that she had injuries to her arms and neck and Sergeant Ziccardi did see bruises on both of the Complainant's arms and a "slight redness" on her neck. Sergeant Ziccardi testified that two photos taken by another officer at the precinct (Dep't. Exs. 4A and 4B) were consistent with the bruises she saw on the Complainant's arms on February 12th. There was no picture documenting the neck redness Sergeant Ziccardi saw. The Complainant told Sergeant Ziccardi that she may have bitten or struck Respondent when she was trying to fight him off. She also told Sergeant Ziccardi that her children were sleeping and she didn't think they saw anything during the altercation. The Complainant did not say the children were in the bed where the altercation took place. (Tr. pp. 58-59, 61-64, 69-71)

Also in evidence are the transcript and audio recording of Sergeant Ziccardi's interview with the Complainant. (Dep't Ex. 5A & 5B) Sergeant Ziccardi in her testimony at trial, as described above, relayed the essential statements made by the Complainant in her interview with her. The transcript provides some additional details about the incidents. The Complainant said Respondent was upset on February 4th, because someone had told him that if you want to know if your partner loves you, they need to take care of you when you are in that state and therefore, it was obvious that the Complainant didn't love him because she didn't take care of him when he was on the couch. The Complainant told Respondent he was the one who decided to drink and she just covered him so as not to disturb him and he was taking it the wrong way. The Complainant said as Respondent got more upset, he hit her with a closed fist. That was the only blow he gave her, but when she tried to get up off the bed he grabbed her by the arms. He told her to lie down and asked her if she wanted to know what he was capable of. (Dep't. Ex. 5A, pp. 7-9)

The transcript includes the Complainant's statement that she was tired and, "maybe it was my fault too, because I said yes." That is when Respondent grabbed her by her neck with his

hand. She may have hit or bit him because there was a moment she felt that he was he was “maybe going to go too far” and she couldn’t breathe. When Respondent saw her arms, he said he was sorry. He said because he was drinking he didn’t realize the pressure he was applying. (Dep’t. Ex. 5A, pp. 5-12)

The Complainant said she just had a bit of bruising on her neck from the February 4th incident and that she was in mild pain for about two days, but she could move her neck. She also told Sergeant Ziccardi that Respondent had assaulted her physically about three times in the past, but that Respondent said it was not hitting. The Complainant said Respondent was not a bad person and that she wasn’t going to speak badly about him, but this time she felt fearful and “couldn’t stand it anymore.” She thought she might get over the feeling in a few days and that is why she waited a week to report it, but she still felt afraid a week later. She also didn’t want to hurt Respondent’s career. She wanted him to take a class or for someone to talk to him and tell him he had to control his temper. (Dep’t. Ex. 5A, pp. 12-13, 16-19)

With regard to February 6th, the transcribed interview contains details in addition to those testified to by Sergeant Ziccardi. The Complainant said the minor had a fight on February 6th with Respondent over the marks the minor saw on the Complainant. Later, Respondent got upset when the minor wouldn’t answer his phone call. When the Complainant and the minor were together, the minor did answer Respondent’s call and told the Complainant that Respondent was very upset. Respondent then called the Complainant and told her he wanted both of them to come home right away and that the minor would know who he really was then. Respondent told the Complainant that he was going to beat the minor. He then said he wasn’t going to do that, he just wanted to frighten her to teach her a lesson. The Complainant went home by herself and told the minor not to go with her. The minor went to her father’s house and stayed there. The

Complainant also said that on February 6th, Respondent kicked her in the left knee area, but she didn't know if it was an intentional kick. (Dep't. Ex. 5A, pp. 20-24, 31-32)

On February 15, 2018, Lieutenant Tolentino, a case supervisor and team leader assigned to Transit Bureau Investigations, conducted an interview in Spanish² with the Complainant. Sergeant Figueroa was also present for the interview, which lasted approximately an hour and a half and was recorded and transcribed in Spanish and translated into English. (Dep't Exs. 6A, 6B). Lieutenant Tolentino testified that the Complainant told him that on February 4, 2018, she got home around 5:30 am and when she saw Respondent sleeping on a sofa in the living room, she covered him with a blanket and then went to her bedroom. Shortly after that, Respondent entered the bedroom and was upset that she left him on the sofa. The Complainant and Respondent argued and Respondent grabbed the Complainant's arms and pinned her on the bed. Respondent asked the Complainant if she wanted to see what he was capable of. She told him to do what he had to do and then he put his arm around her and compressed her neck. She felt panicked because she had difficulty breathing. (Tr. 86-89)

The Complainant told Lieutenant Tolentino that at the time of the altercation, her two young children were sleeping in the bed with her and the minor was asleep in another room. The Complainant told Lieutenant Tolentino that the incident ended when she told Respondent she was having trouble breathing because she is asthmatic so he took her to the kitchen and let her use her inhaler. He apologized to her and they went back to bed. (Tr. pp. 89-91).

² Lieutenant Tolentino testified that while he has not been certified in Spanish by the Department, his first language is Spanish, he is fluent in Spanish, and he speaks it with family members. He did not have any trouble understanding the Complainant. (Tr. p. 86)

The Complainant also told Lieutenant Tolentino that on February 6, 2018, she received a phone call from Respondent who said that he had been tracking the minor's phone and saw that she wasn't where she was supposed to be. Respondent told the Complainant that the minor wasn't answering his calls and he directed the Complainant to bring the minor to him because he was going to hit her. The Complainant told the minor to stay with her father. Respondent told the Complainant that if he saw the minor, he would put a bullet in her. (Tr. pp. 91-92)

Lieutenant Tolentino described the Complainant's demeanor during the interview as being very scared, nervous and "almost reluctant to speak with us." She told Lieutenant Tolentino that at first she was going to just let the incidents go, but the statement Respondent made about the minor kept weighing on her and she decided to come forward. Numerous times she expressed concerns that she was derailing Respondent's career and that she had harmed her family. Specifically, she was concerned about Respondent being returned to full duty and remaining a police officer. She asked how she could drop the criminal charges. According to Lieutenant Tolentino, although she expressed these concerns, the Complainant never said the incidents did not happen. (Tr. pp. 92-99)

Lieutenant Tolentino was aware that [REDACTED] [REDACTED] and confirmed that the allegation made by the Complainant concerning the February 6, 2018 incident was closed by the Transit Bureau Investigations Unit as unsubstantiated. He testified that it was unsubstantiated because there was no corroboration for this allegation, even though he believed the Complainant. (Tr. pp. 97-98, 104-05)

The transcript of the February 15th interview of the Complainant by Lieutenant Tolentino confirms his testimony before the court concerning what the Complainant told him and also provides some additional details. (Dep't Ex. 6A) The Complainant told Lieutenant Tolentino, as she told Sergeant Ziccardi, that the reason Respondent was upset on February 4th was that he

wasn't asleep when she put the blanket on him, but that he wanted to see what she would do for him when he felt bad. The Complainant said that Respondent had been drinking prior to this incident, but she added that he hardly drinks. The Complainant also told Lieutenant Tolentino that maybe she provoked Respondent when she said yes to his question as to whether she wanted to know what he was capable of. The Complainant described the physical altercation as Respondent grabbing her arms and pushing her down, hitting her and pressuring her with his arm. She stated that when Respondent put his hand on her she felt panic that he was going to squeeze harder. (Dep't Ex. 6A, pp. 17-30)

With regard to the February 6th incident, the Complainant explained that while Respondent was talking to the Complainant on the phone before she came home, he said he would beat the minor if she didn't come home. When the Complainant was at home talking to Respondent later that day, he said if the minor didn't come home and apologize he would put a bullet in her. This is when he kicked the Complainant, but she said the kick hit the edge of her knee and maybe Respondent didn't really want to strike her. The Complainant also said that Respondent did not have his gun out when he made the comment about the bullet, nor had he ever assaulted her with a gun or ever pointed his gun at her. She added that Respondent was very careful with his gun. (Dep't. Ex. 6A, pp. 45-50, 58)

The Complainant expressed concerns to Lieutenant Tolentino about harming Respondent's career. At one point she stated, "I know what he did was not right, but, at the end of the day, he's my [REDACTED]." She stated that she loves Respondent but that this time the fear took over but she now wishes she never said anything about it because his career was important to her. She also said she didn't want to do him harm like this because Respondent's sister had told her that they took away Respondent's job and his car and he doesn't have any money and he won't be able to work anymore. Respondent also told the Complainant's brothers that they took

everything from Respondent and he wasn't able to work anymore. After she asked Lieutenant Tolentino several times how she could drop the criminal charges she stated, "Everything I've said is true and I can say it 20 times because - and it's going to be the same story because it's the truth, and I wish this would never have happened, but, it did ..." (Dep't. Ex. 6A, pp. 5, 35, 51-56, 75)

Sergeant Carlos Figueroa, who worked under Lieutenant Tolentino in Transit Investigations, testified that he was assigned to investigate the allegations made by the Complainant. He unsuccessfully attempted to interview the minor and two other close relatives of the Complainant. On September 25, 2018, he was able to interview the Complainant's niece who translated for the Complainant when she went to the [REDACTED] precinct on February 12, 2018. The Complainant's niece told him that the Complainant understood the questions that were being asked of her and the paperwork she filled out on that date. The niece said she asked the Complainant many times whether she understood and the Complainant told her she did. (Tr. pp.126-130) Sergeant Figueroa's conversations with the Complainant's niece took place by phone and were recorded and transcribed. (Dep't. Exs. 7A, 7B, 7C)

In addition to the testimony from the witnesses who spoke to the Complainant and her niece and the complaint report, the court had the benefit of having in evidence a signed handwritten statement from the Complainant made on February 12, 2018. The statement was also signed and witnessed by the Complainant's niece and Police Officer Green. In this statement, the Complainant wrote that when she got home from work, Respondent, who had been drinking, was laying on the sofa. He got mad because she didn't take him to bed. She further wrote that Respondent verbally assaulted her and punched her in the stomach and he left black and blue marks on her arms. Respondent also squeezed her neck with his arm and she couldn't breathe and felt pain in her neck. In this statement, the Complainant also wrote about

an incident concerning the minor. Respondent got “really mad” when the minor wouldn’t answer his phone call. He told the Complainant to bring the minor home so she would know who is who when he gets home. The Complainant told the minor not to go home and Respondent got angry. He told the Complainant that if the minor did not go home and ask for forgiveness, he would look for her and shoot her. (Dep’t. Ex. 3)

Respondent testified at trial that he had no verbal or physical altercation with the Complainant on February 4th and that he did not threaten the minor. He testified that he had a good relationship with the Complainant in February 2018. The Complainant got upset with him about a trip he took to Mexico in January 2018 because he refused to bring a big suitcase to the Complainant’s mother or to see her mother. Respondent further testified that about a year and a half after the Complainant made these current allegations, she told him that while he was in Mexico, his aunt had told her that he has a wife and child in Mexico and was planning to move there. The Complainant told Respondent that her sisters told her she needed to do something so she wasn’t left without any money and the best thing to do was to make an allegation against him. (Tr. 196, 201-207, 214)

With regard to February 4th, Respondent testified that the Complainant came home while he was sleeping in bed with his children. She tapped him on the leg and asked why the children were in the bed and then she left. He went back to sleep. He testified that the children always slept with him. He did not know where the Complainant went. (Tr. pp. 213-214, 223-224)

On February 6th, he did track the minor on her cell phone. He called her from a place he could watch her and she did not pick up the phone for his three calls. Respondent called the Complainant and she told him the minor was with her, which he knew wasn’t correct. He didn’t tell the Complainant to get the minor to go home. The minor did not go home that night nor did she return to the shared residence prior to August 2018. (Tr. 214, 223-227, 229-30)

In addition to Respondent's testimony, the defense introduced an undated, but signed and notarized document purportedly written by the Complainant. In the document, which was written in Spanish, but translated into English, the Complainant wrote that the report she made against Respondent was not true and that he did not choke her or hit her. She stated that she signed the report because she didn't see the questions above the report and the person translating for her did not ask her the questions either. (Resp. Ex. B)

The Department's case consists of hearsay statements made by the Complainant. Hearsay is admissible in administrative proceedings and may form the sole basis for a finding of fact. *See* 38 RCNY § 15-04 (e); *Gray v. Adduci*, 73 N.Y. 2d 741 (1988); *Dep't of Correction v. Jackson*, OATH Index No. 134/04 at 4-5 (May 5, 2004). However, whenever hearsay is controverted and outcome-dispositive, particular scrutiny must be paid to determine if the hearsay is reliable. *See Disciplinary Case No. 2015-13973* (Oct. 14, 2016), citing *In re 125 Bar Corp. v. State Liquor Auth. of N.Y.*, 24 N.Y.2d 174 (1969).

In this case, there is sufficient indicia of reliability to credit the hearsay statements of the Complainant with regard to the February 4th incident. First of all, she was consistent in the key elements of her version of events over the course of several interviews. The Complainant told her first police interviewer, through her niece as an interpreter, that Respondent hit her, grabbed her arms in a manner that caused bruises and choked her. This information is documented in the Complaint Report. (Dep't. Ex. 1). Also, the niece confirmed to Sergeant Figueroa in a recorded conversation that the Complainant had said these things in Spanish and that the Complainant understood what was being asked of her. The Complainant next told Lieutenant Briceno, this time in Spanish, that Respondent hit her, grabbed her arms causing bruises and choked her. In questioning by a third officer, Sergeant Ziccardi, again the Complainant was consistent in reporting that on February 4th, Respondent hit her, grabbed her arms causing bruising and

choked her. Three days after these first interviews, the Complainant, during a lengthy hour and a half interview conducted by Lieutenant Tolentino in Spanish, again maintained that Respondent hit her, grabbed her arms and choked her. The Complainant's story of the cause of the incident also did not vary. She consistently told interviewers that Respondent got angry over her having a blanket put over him while he was on a couch.

A second factor to consider with regard to reliability is that two interviews were recorded. The hearsay in these instances does not come from just a third party relaying what the Complainant told them, but rather, the Complainant can be heard providing the information that supports the allegation in Specification 1.

A third factor supporting the reliability of the Complainant's hearsay statements regarding February 4th is found by evaluating the content of her statements for any traces of vindictiveness or bias which would give one pause as to their reliability. In the Complainant's statements, she makes attempts to actually lessen the severity of what happened by shifting blame onto herself. Throughout all of the interviews, several times the Complainant stated that maybe she provoked Respondent. With regard to a kick she received from Respondent on a different date, she said it might not have been intentional. It is important to note that the Complainant also stated positive things about Respondent throughout her interviews, such as when she indicated that he hardly drinks, he is not a bad person, or that he is careful with his gun and never pointed it at her. Her statements taken as a whole did not appear to be statements of a person with an agenda to falsely accuse Respondent.

A fourth factor indicating the reliability of the hearsay statements of the Complainant is that there is a document actually written by the Complainant in which she wrote that on February 4th, Respondent hit her, grabbed her arms causing bruises and choked her. This document can be compared to Respondent's Exhibit B which the defense has offered as a statement also

purported to be written by the Complainant. The distinctions between these two documents highlight the indicia of reliability attached to one and not to the other. The court is able to ascertain that Dep't. Ex. 3 was written on a certain date, in front of police officers at the [REDACTED] precinct. The officer who verified the writing testified and was available for cross-examination if counsel wished to inquire as to any details surrounding the conditions under which the writing was made. In contrast, Resp. Ex. B is an undated writing presented without any witness to testify as to how it was made, when it was made, where it was made, or who was present when it was made. While the court can have confidence that the Complainant alone wrote Dep't. Ex. 3 and that the content was verified with her by an officer, the same is not true of Respondent's Ex. B, which therefore has not been given any weight by the court.³ The court finds Dep't. Ex. 3 to be reliable hearsay and supportive of the other hearsay statements made by the Complainant in her interviews.

Finally, a fifth factor, and very convincing evidence of the reliability of the Complainant's hearsay statements, is the presence of bruises which were observed on the Complainant's arms by Sergeant Ziccardi and documented in photos introduced into evidence as Dep't. Exs. 4A and 4B. These photos show bruises in the areas of the Complainant's arms that corroborate her statements that Respondent grabbed and squeezed her arms. Sergeant Ziccardi also testified that she saw a slight redness on the Complainant's neck. While there is no photo evidence of this, the photo evidence of the arm bruises in and of itself corroborates the hearsay evidence that a physical altercation took place. While the defense has suggested that Respondent

³ The court also noted that in Resp. Ex. B, the Complainant states the reason she made false statements to the police was that she did not understand the language on the form she filled out. This reason does not make sense. Even if she didn't understand a word on the form, it doesn't explain why she wrote a complete description of the incident including writing that Respondent hit her, grabbed her arms and choked her.

inflicted the marks on her arms herself, that is pure speculation which is not supported by any evidence introduced at trial and is therefore rejected by the court.

The defense has also suggested that the Complainant's description of events should be rejected because there are several inaccurate boxes checked on the forms the police filled out on February 12, 2018. However, the Complainant did not prepare the forms other than the section of Dep't Ex. 3 which she herself wrote. Any mistakes made by the police in checking boxes on their paperwork certainly does not undermine the credibility of the consistent description of the event as told by the Complainant.

Another reason cited by the defense for rejecting the Complainant's version of what happened is that there are discrepancies in her story about whether children were present for the February 4th incident. However, while again it may not be noted in the initial police paperwork that children were present on the bed, there is no evidence that the Complainant said they were not present. When specifically asked in her interviews about who was present, she consistently indicated children were sleeping on the bed.

With regard to the children being in the bed, the defense has argued they would have been awakened if the altercation had in fact taken place. This is speculation. There is no indication as to how loud the verbal altercation was and young children may well have slept through the physical portion of the altercation. If the Complainant was fabricating her story, she could have denied anyone else was even on the bed, but she indicated they were there and that they did not see anything or wake up until the end of the altercation.

Based on the above analysis, the court finds the Complainant's hearsay evidence concerning the events of February 4, 2018, to be reliable and to prove by a preponderance of the evidence that Respondent did engage in a physical altercation with the Complainant on that date. I find Respondent Guilty of Specification 1.

With regard to Specification 2, as the Department's case is based solely on hearsay, the court must again apply rigorous scrutiny to determine the reliability of this evidence. Unlike the hearsay which proved the charge in Specification 1, there are several factors which cause the court to question the reliability of the hearsay presented to support Specification 2.

First of all, while noting that the Complainant did not prepare the complaint report, it is of concern that there is no mention of the threat to the minor on the form. (Resp. Ex. A, Dep't. Ex. 1) Secondly and of more significance, the Complainant failed to mention anything about Respondent threatening to shoot the minor in her interview with Sergeant Ziccardi. Unlike the Complainant's consistent version of events regarding February 4th, the court is troubled by the omission of such a significant fact about the threat to the minor. The failure to mention the shooting threat to Sergeant Ziccardi could possibly have been explained if the Complainant had testified. However, without the benefit of that testimony, the court finds this hearsay not sufficiently reliable to allow the court to find Respondent guilty of Specification 2 based solely on hearsay evidence. Therefore, the court finds Respondent Not Guilty of Specification 2 which charged him with telling the Complainant that if the minor did not come home he would "look for her and shoot her."

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has requested a penalty of the loss of 30 vacation days, one year of dismissal probation and counseling.⁴

Based on precedent in cases involving domestic incidents, the request for the loss of 30 vacation days and one year of dismissal probation seems reasonable here. *See Disciplinary Case No. 2019-21168* (April 28, 2020) in which a seven year police officer forfeited 35 vacation days and was placed on one-year dismissal probation for hitting a person in the face and failing to remain on the scene. Several recent negotiated pleas also imposed penalties including the loss of approximately 30 days and one year of dismissal probation. *See Disciplinary Case No. 2019-20685* (August 25, 2020) (twelve year lieutenant involved in physical altercation and impeding the investigation and being discourteous lost 30 vacation days and was placed on dismissal probation for one year); and *Disciplinary Case No. 2018-18598* (June 16, 2020) (thirteen year sergeant lost 33 suspension days and was placed on one year dismissal probation for engaging in physical altercation).

I recommend that Respondent in this case be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to Section 14-115(d) of the Administrative Code during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. I further recommend that Respondent forfeit 30 vacation days, in addition to 30

⁴ The Administrative Code of the City of New York, Section 14-115, does not authorize me as the hearing officer to recommend a penalty including a requirement that a Respondent undergo counseling. Such penalties however may be agreed upon by the parties.

days served on pretrial suspension without pay. Finally, it is recommended that four (4) suspension days previously served without pay be restored to Respondent.⁵

Respectfully submitted,

Nancy Ryan

Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED
DERMOT SHEA
APR 29 2021
DERMOT SHEA
POLICE COMMISSIONER

⁵ The court makes this recommendation having reviewed the comments submitted by Respondent's counsel and consistent with Sections 14-115 & 14-123 of the Administrative Code of the City of New York and Section 75 of the New York State Civil Service Law. The Administrative Code is clear that the Police Commissioner shall have the power to suspend an officer without pay, pending the trial of disciplinary charges. New York State Civil Service Law Section 75 3(a) further specifies that, pending a disciplinary hearing and determination on charges of misconduct, a police officer employed by the NYPD "may be suspended without pay for a period not exceeding thirty days."



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT EDEL SANCHEZ
TAX REGISTRY NO. 935686
DISCIPLINARY CASE NO. 2018-18572

Respondent was appointed to the Department on July 1, 2004. On his last three annual performance evaluations, he twice received 4.5 overall ratings of "Highly Competent/Extremely Competent" for 2017 and 2018 and once received a 4.0 rating of "Highly Competent" rating for 2016.

Respondent has no disciplinary history. In connection with the instant matter, he was suspended from February 12, 2018 to March 17, 2018, after which he was placed on modified assignment. Additionally, he was placed on Level 2 Disciplinary Monitoring on February 22, 2018. Respondent remains on modified assignment and monitoring is ongoing.

[REDACTED]

For your consideration.

Nancy Ryan

Nancy R. Ryan
Assistant Deputy Commissioner Trials